

PEC Proposal re: NHL Bellwether Case Selection Protocol

To facilitate a fair and efficient process to select local cases for trial before Judge Nelson in the NHL MDL litigation, the parties hereby agree and stipulate as follows:

1. The Parties agree that cases to be selected for the initial trial pool must be cases over which the Court has personal jurisdiction, cases that are properly venued for trial in the District of Minnesota, and cases that were filed directly in this Court and thus are not subject to *Lexecon* challenges.

2. No later than October 19, 2018, the NHL and the Plaintiffs' Executive Committee ("PEC") shall each identify the claims of six plaintiffs that were directly filed in Minnesota, and that the identifying party is prepared to try without jurisdictional or venue challenges, to be placed in the pool of potential trial cases. If the PEC or a plaintiff is unwilling or unable to conduct trials in one or more of the six plaintiffs' cases proposed by the NHL, each such case shall be identified immediately to the NHL so that a replacement plaintiff case can be selected by the NHL.

3. On or before November 2, 2018, the PEC and the NHL shall identify any of the other side's six cases which it believes is subject to dismissal or transfer based on jurisdictional or venue grounds and the specific basis for each such identified challenge.

4. The PEC and the NHL shall promptly meet and confer to discuss and attempt to resolve each side's respective identifications of jurisdictional or venue challenges. Prior to any motion practice, the PEC and the NHL may choose to replace any plaintiff's case that the other side is challenging based on lack of personal jurisdiction or venue with another trial candidate.

5. If after the meet and confer process the PEC or the NHL wishes to have any jurisdictional or venue issue resolved by the Court, it may file a motion with respect to a particular case to obtain a ruling on jurisdictional or venue issues.

6. After the meet and confer process, or following resolution of any jurisdictional or venue motions, if necessary, the Parties shall each select four cases from the remaining trial pool and conduct case-specific fact discovery on those cases in accordance with Rule 26. The parties will make good-faith efforts to complete this discovery within 150 days.

7. If the Court's ruling on jurisdictional or venue issues results in either party having fewer than four remaining trial pool cases, that party may identify one or more new cases, such that they have four cases remaining in the trial pool, within ten days after the dismissal or transfer order is issued. Within ten days after identification of the new plaintiff's case(s), the other side shall advise if it believes that case is subject to dismissal or transfer based on jurisdictional or venue grounds and the specific basis for such challenge. The steps set forth in Paragraphs 4 and 5 shall then proceed while discovery continues on the other trial pool cases. There shall be no discovery on the replacement case(s) until jurisdictional or venue issues have been resolved. If the Court's ruling on any jurisdictional or venue issues results in dismissal of a new case identified under this Paragraph, the Parties shall address with the Court whether the

side with fewer than four remaining trial pool cases should be allowed to identify additional replacement cases.

8. If, at any point during the case-specific discovery process, any plaintiff's case selected by the NHL for inclusion in the trial pool is voluntarily dismissed, the NHL shall have ten days to select a replacement plaintiff's case. The Parties shall then complete the same discovery contemplated by Paragraph 6 with respect to that plaintiff, and the Parties will expedite such discovery so as not to delay the trial selection process. If any trial pool plaintiff voluntarily dismisses his claims after the case-specific discovery process is completed, the NHL shall be entitled to identify a replacement case and the parties shall address with the Court the implications of the dismissal.

9. Within 14 days of the completion of the discovery as to trial pool cases contemplated by Paragraph 6, the PEC and the NHL shall each select three cases from the remaining trial pool cases as Finalist Candidates for trial.

10. No later than 10 days after the completion of the identification process, the PEC and the NHL may each strike one case from among the six Finalist Candidates.

11. No later than five days after the strikes are exercised, the Parties shall either jointly or separately submit a letter brief to the Court advocating for a particular trial order. The Court will, at its earliest convenience, select the order in which the four cases will be tried. Once the order of trials is established, if any of the Trial Cases is voluntarily dismissed, the Parties shall address with the Court the procedural implications of the dismissal before any trials proceed.

12. Once the order of trials is established in accordance with Paragraph 11, the Court will enter a scheduling order for each case that sets a trial date and includes deadlines for completing fact and expert discovery as well as any motions for summary judgment (e.g., preemption, statute of limitations), *Daubert* motions and motions in limine.